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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,987	10/12/2001	Raymond Clarke	10621-3	4161

7590 06/13/2003

Sheldon & Mak
9th Floor
225 South Lake Avenue
Pasadena, CA 91101

EXAMINER
RHEE, JANE J

ART UNIT	PAPER NUMBER
1772	10

DATE MAILED: 06/13/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

A 8-16

Advisory Action	Application No. 09/976,987	Applicant(s) CLARKE ET AL.	
	Examiner Jane J Rhee	Art Unit 1772	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 5/27/03 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2.☒ The proposed amendment(s) will not be entered because:

(a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);

(b) ☐ they raise the issue of new matter (see Note below);

(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3.☐ Applicant's reply has overcome the following rejection(s): _____.

4.☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5.☐ The a)☐ affidavit, b)☐ exhibit, or c)☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.

6.☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7.☒ For purposes of Appeal, the proposed amendment(s) a)☒ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: *1-8,11,13,15,16,20-26 and 28-31*.

Claim(s) withdrawn from consideration: _____.

8.☐ The proposed drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9.☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10.☒ Other: *see attachment*

ADVISORY ACTION

1. Newly submitted claims 32 and 33 raise new issues that will require further consideration and search. The new issue is the table of pore sizes and percent of pores larger than pore size.

2. The terminal disclaimer is not proper and has not been accepted because the attorney is not of record in the oath/declaration or a separate paper filed appointing a new or associate attorney nor is there a customer number.

Response to Arguments

3. Applicant's arguments filed 5/27/03 have been fully considered but they are not persuasive.

In response to applicant's argument that Examiner believes there is an unobvious difference between the microporous films prepared by the process defined in claim 1 and by the process disclosed in Antoon, the applicant uses a different process than that of Antoon, however, what process the applicant uses does not make the product patentably distinct from Antoon. A structural difference between the prior art and applicant's invention is the determining factor of patentable distinction.

In response to applicant's argument that Examiner believes that the applicant should provide evidence for the criticality of the average pores size less than 0.24, the prior art, Antoon discloses a microporous polymeric film and a polymeric coating however fails to disclose a pore size. The pore size is the only structural difference between the present invention and the prior art Antoon, therefore, Examiner's thoughts were that the novelty of the present invention may lie on the pore size hence the

criticality of the average pore size was inquired. However, applicant's stated in their response on page 16, "applicant's have not argued, and are not now arguing, that the average pore size of less than 0.24 micron distinguishes the claimed invention from Antoon," Examiner realizes that the pore size less than 0.24 micron wasn't a very significant factor in the present invention.

In response to applicant's argument that it is unclear to what the Examiner meant by "recited properties", Examiner meant that the recited properties are the average pore size and the densities of the pores.

In response to applicant's argument of how the Examiner can maintain the statement that the gas permeable membrane of Antoon is identical to or only slightly different than the gas permeable membrane prepared by the method of the claim because both gas permeable membrane have a microporous polymeric film and a polymeric coating on the microporous polymeric film, both have an oxygen permeance of at least 775,000ml/m2.atm.24hrs and a CO2/oxygen permeability ratio of at least 1.5" as required by applicant's claim 1 in view of Clarke's declaration that states that the OTR and R ratio of a gas permeable membrane can vary widely above the stated minimum values and this variation can result from the use of microporous films and/or polymeric coating which differ from each other, even when gas-permeable membranes have the same OTR and R ratio, they can be based on substantially different microporous films and/or substantially different coatings and even when the polymeric coating is the same, gas permeable membranes based on different microporous films can have OTR and R values which are greater than the stated minimum values, but

which are widely different from each other, Antoon discloses the same gas permeable membrane made from polypropylene (col. 3 lines 61) and the same polymeric coating poly(dimethylsiloxane) desired by the applicant wherein the oxygen permeance is at least 775,000ml/m2.atm.24hrs and a CO2/oxygen permeability ratio of at least 1.5" therefore, the 35 U.S.C. 102 rejection is maintained.

In response to applicant's argument that the Examiner does not provide any reason or evidence of the relationship between the size and distribution of the pores in the microporous film, and the OTR and R ratio of a membrane produced by coating the microporous film with a polymer, Antoon teaches that the silicone coated film must be selected to have a permeability sufficient to allow the type of control required within a reasonable time and the microporous sheet can be prepared by casting a sheet of a mixture of the polymer highly loaded with a filler material wherein the degree of permeability that results is a function of the amount of filler in the polymer wherein the particle size of the filler determines the size of the pores (col. 4 lines 43- col. 5 lines 1-4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 703-605-4959. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 703-308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Jane Rhee
June 10, 2003

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

6/10/03